IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9371 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DEVSIBHAI LAXMANBHAI SOLANKI

Versus

DISTRICT DEVELOPMENT OFFICER

Appearance:

1. Special Civil Application No. 9371 of 1999

MR PURVISH MALKAN FOR MR JITENDRA MALKAN for Petitioner No. 1

MR HS MUNSHAW for Respondent No. 1

MR ND GOHIL ASSTT GOVERNMENT PLEADER for Respondent No. 1,2-3

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 29/09/2003

ORAL JUDGEMENT

Heard learned advocate Mr.Purvish Malkan on behalf of the petitioner and learned advocate

Mr.H.S.Munshaw for respondent Nos.1 & 2, so also, learned AGP Mr.N.D.Gohil for respondent No.3.

2. In the present petition, the petitioner has mainly prayed for issuance of appropriate directions on the respondent directing the respondent to provide a copy of the inquiry report dated 22.5.1997 submitted by the inquiry officer to the respondent No.1 - The District Development Officer and further direct the respondents to pay accumulative interest at the rate of 21 % for delayed payment of the pensionary benefits and thirdly to direct the respondent No.3 to inquire into the cause of false accusation against the petitioner who is a member of the scheduled caste and also prayed for the interim relief in terms of the main relief.

3. Learned advocate Mr.Malkan has submitted that the petitioner has retired from service on 31st July, 1993. That on the last day of his service, means, on the date of retirement, he has been served with the chargesheet i.e. on 31st July, 1993. According to the learned advocate Mr.Malkan, the departmental inquiry remained pending till 17th October, 1998 the day on which the petitioner came to be exonerated by the Department. Therefore, learned advocate Mr.Malkan has submitted that because of pendency of the departmental inquiry till exoneration by the Department, retirement benefits including the pension, gratuity and leave encashment are not paid to the petitioner in time and therefore, the petitioner is entitled to interest at the rate of 12 % p.m. for delayed payment of retirement benefits as per the Government Resolution dated 8th December, 1994.

4. Against the contentions and case of the petitioner, affidavit-in-reply has been filed by the respondent No.1 - District Development Officer, Surendranagar District Panchayat, Surendranagar. In the reply filed by the respondent No.1, specific averments made to the effect that chargesheet dated 29th July, 1993 served on the petitioner and the petitioner retired on 31st July, 1993 and the inquiry officer was appointed to hold departmental inquiry against the petitioner who submitted the report on 22nd December, 1997 and thereafter, disciplinary authority exonerated the petitioner from all the charges by order dated 17th October, 1998. It is further averred that due to involvement of the petitioner in the criminal case numbered as Criminal Case No.73 / 1993, which was pending against the petitioner, wherefrom he came to discharged on 5th November, 1997. That said order dated 5th November, 1997 was received on 10th September, 1998.

According to the respondent No.1, the petitioner was paid all his dues like provident fund, group insurance etc. on his superannuation from the service and his provisional monthly pension was also fixed at Rs.786/- on 15th October, 1993. It is further averred that as per the Government Resolution dated 17th July, 1991, the petitioner has paid his pension, gratuity after retaining 10 % of the said amount and on completion of two years of his retirement, the said amount of Rs.23,760/- was released on 19th September, 1995 after retaining an amount of Rs.2,640/-. Subsequently, after the petitioner came to be exonerated in the departmental inquiry proceedings, the petitioner was also paid the remaining amount of gratuity on 30th September, 1999 and thereafter even the benefits of leave encashment also. The respondent No.1 also stated that a proposal for commutation of pension was forwarded on 21st June, 1999 to the Director of Pension and Provident Fund and an amount of Rs.33,892.32 ps. was sanctioned and immediately on 30th September, 1999, it was paid to him. It was made clear that even proceedings for benefits of revision of the pension under the revision of Pay Rules subsequent to 5th Pay Commission are also initiated and within short period, the same will be conferred. The respondent No.1 has also further made averments in the reply that according to them, amount which are found to be dues as per the Rules and Regulations, necessary actions are being taken for the benefit of the revision of the pension and therefore, there was no victimization only because he belongs to backward class. The report of the inquiry report is provided to the delinquent only if he is fond guilty and the departmental proceedings are to be initiated against him, but in the instant case the petitioner is exonerated by the Competent Authority and hence, the said copy is not supplied to him. According to the respondent No.1, there is no delay on their part for making payment in respect of the retirement benefits.

5. On behalf of the respondent No.2, One Shri B.B.Patel, Development Commissioner, Gandhinagar has filed reply. According to the respondent No.2, because of pendency of the department proceedings, ad hoc pension of Rs.786/- was approved by letter dated 15th October, 1993. By order dated 16th October, 1995, the gratuity amount of Rs.23,760/- was also paid. Thereafter, 10 % of the amount of the gratuity was withheld which comes to Rs.2,640/-. Thereafter, by letter dated 19th November, 1998, a letter was addressed to the Treasury Officer, Surendranagar to pay the unpaid amount of Rs.33,892.32 ps. towards pension amount. Director of Pension and Provident Fund revalidated the pension payment order by

order dated 30.9.1999. Since the departmental inquiry was pending, the departmental inquiry was pending, the petitioner was not paid full retirement benefits and therefore, the petitioner is not entitled to get any interest. According to the respondent No.2, there is no delay in making payment for retirement benefits but it was delay on the part of the petitioner as the Court case was also pending and the petitioner had never informed about disposal of the criminal case pending against him in the Court of Law. Therefore, according to the respondent No.2, the petitioner is personally responsible for non cooperation and he cannot be allowed to take the advantage of his own wrong activities.

6. Learned advocate Mr.Malkan has relied on one unreported decision of this Court [Coram : Justice C.K.Buch, J.] rendered in Special Civil Application No. 12815 / 2000 dated 25th October, 2001 and mainly emphasized on the observations made by this Court in para-8 of the decision and mainly relied on Government Resolution dated 8th December, 1994.

7. I have considered submissions made by the learned advocate Mr.Malkan and counter submissions made by the learned advocates for the other side. I have also gone through the unreported decision of this Court and perused the observations made in para-8 of the aforesaid decision and in my humble opinion, the facts of the case so relied and the case on hands are different and in comparison quite distinguishable. In the instant case, chargesheet was served on 31st July, 1993 on the date on which he was retired from service. The petitioner came to be exonerated by the disciplinary authority on 17th October, 1998, means, till five years the departmental inquiry was pending against the petitioner and mean while, the respondent No.1 had paid almost all the retirement dues to the petitioner as per their reply on or before 19th September, 1995 save and except amount on three heads were not paid viz.[i] 10 % amount retained from the gratuity which comes to Rs.2640/-., [ii] amount of leave encashment and [iii] the amount of pension Rs.33,892.32 ps. But this unpaid amounts were also paid to him on 30th September, 1999 except that all the amounts were paid prior to 19th September, 1995, in other words, because of pendency of inquiry proceedings, department has taken some time to make final payment to the petitioner but in between the provisional pension has been paid to the petitioner and certain benefits of gratuity were also paid to the petitioner before completion of the departmental inquiry. After completion of the departmental inquiry on 17th October, 1998,

immediately all the papers were forwarded to the Director of Pension and Provident Fund and some time was necessary to scrutinise all the papers and taking decision and ultimately, on 30th September, 1999, almost all the payments were made to the petitioner. It is also required to be appreciated that as per the averments made by the respondents, the petitioner had not drawn the attention of the Department and / or concerned authority to the fact that the criminal case pending against him has been disposed of and therefore, it can be said that in any case for some delay, to some extent the petitioner was responsible for remaining negligent while not drawing the attention of the Departmment. Therefore, considering all the aspects of the matter, according to my opinion, there was no deliberate and unreasonable delay on the part of the Department for making necessary payments to the petitioner but because of pendency of the departmental inquiry, final payment was not made immediately to the petitioner. But it is not important to note that in a period in between, whatever benefits such as, provisional pension etc, to which, the petitioner was entitled, same was paid to the petitioner. Therefore, according to my opinion, there is no deliberate and unreasonable delay on the part of the Department for which the petitioner is entitled to any interest as per the Government Resolution dated 8th December, 1994.

8. In view of above discussion, the petitioner, in my opinion, is not entitled to get any interest from the respondents.

9. At this stage, at the end of dictation, learned advocate Mr.Malkan for the petitioner has, again making reference to the decision so relied upon, has argued and emphasized on observations made in para-7 of the said decision and according to him, this being identical situation in the present case, the petitioner deserves to be granted interest on the delayed payment of retirement benefits. He also contended that a copy of the inquiry report has not been given to the petitioner and as per Rule 8 of the Service Rules, the petitioner ought to have been supplied a copy of the inquiry report. However, very suddenly, he repeated his submissions and makes clear that if the delinquent is required to be punished by the disciplinary authority, then inquiry report shall have to be supplied to the delinquent but there is no negative provision made in the Service Rules that in no case when no action is required to be taken based on the inquiry report, then a copy of the inquiry report shall not be supplied to the delinquent employee.

10. This Court has also given thoughtful considerations to the arguments and contentions of the learned advocate Mr.Malkan raised at the time of conclusion of the dictation. This Court has also gone through the observations made by this Court in para-7 of the above referred unreported decision relied on by the learned advocate Mr.Malkan. According to my opinion, the facts are different in respect of the present case, simply on the ground that in para-7, it does not make clear that on which date, departmental inquiry proceedings were dropped in the facts of unreported decision, but inquiry had remained pending and that is how, 10 % amount of the gratuity and 100 % commuted pension was not paid to the petitioner of that case and naturally, according to the Rules, provisional pension was paid to the petitioner. In such circumstances, it is pertinent for consideration of the Court to see that whether there is any deliberate and unreasonable delay on the part of the Department not to pay the retirement benefits immediately from the date of retirement of the concerned employee. From the reply, it is found that there was no deliberate and unreasonable delay on the part of the Department as per the allegation made by the petitioner that since he belongs to scheduled caste, there was deliberate delay in making payment to the petitioner. This is not found correct and the allegation is not found to have substantiated and supported considering the reply given by the respondents. Therefore, considering averments made in reply, even the contentions raised by the learned advocate Mr.Malkan subsequently, in my opinion, do not have any substance. However, considering the Service Rules, there may not be any negative provisions made in the Service Rules but while applying a common sense, when the petitioner has been exonerated by the Departmental Disciplinary Authority on 17th October, 1998, obviously, there was no need for the departmental authority to supply a copy of the inquiry report to the delinquent employee as the report was not adverse to the petitioner. Therefore, unless and until some adverse order is passed by the employer or the Department, then copy of such report may be supplied to the concerned employee especially, there is nothing adverse to the petitioner and therefore, it was not obligatory on the part of the department to supply a copy of the inquiry report to the petitioner. Therefore, considering all the aspects of the matter, there seems no substance in both the contentions raised by the learned advocate Mr.Malkan raised subsequently and hence the same are not believed and accepted accordingly. On the contrary, this Court is fully satisfied with the

submissions and explanation given by the respondents in their affidavit-in-reply and this Court does find it fit to exercise the jurisdiction under Article 226 of the Constitution in favour of the petitioner and accordingly, the petition deserves to be rejected.

In view of above discussion, there is no substance in the present petition and the same is dismissed accordingly.

Rule discharged with no order as to costs.

Interim relief, if any, stands vacated.

Date : 29.9.2003 [H.K.Rathod, J.]

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